

Attorney Docket No.: C6656(C)
Serial No.: 10/748,038
Filed: December 30, 2003
Confirmation No.: 6775

REMARKS

Claims 1-2, 5 and 8-13 were rejected under 35 U.S.C. § 103(a) as unpatentable over Paulovich et al. (US Patent 6,523,724) in view of Painchaud et al. (US Patent 5,161,271). Applicant traverses this rejection.

Paulovich et al. was cited for showing a venting closure comprising a neck 166, patch 58 having an off center aperture 410 and backing layer 420. The Examiner recognized the Paulovich et al. lacked the claimed patch adhered to the neck and a backing layer adjacent to the patch.

Painchaud et al. was cited for disclosing a patch closure comprising a patch 31 adhered to a neck 9 and a backing layer 21 adjacent to the patch. From this the Examiner considered that one of ordinary skill in the art could have substituted the Paulovich closure through utilization of the Painchaud et al. patch adhered to the neck and a backing layer, these being alternative equivalent means for applying a closure to a container neck. Applicant respectfully disagrees with this assessment and will now explain why.

Fundamentally the purposes of the Painchaud et al. adhered patch 31 is of different purpose than the Paulovich et al. system. The problem of Painchaud et al. is to provide a closure for a fabric bleach liquid containing bottle. Gases are generated from the bleach in a heated or contaminated environment. See the Abstract (first sentence) and column 1 (lines 6-11). Excess gases such as oxygen and chlorine must be vented. See column 1 (lines 21-30).

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By contrast to Painchaud et al., applicant utilizes an aperture for the release of a vacuum created by a dispensed liquid through spigot 42. The claimed venting closure is meant to suck atmospheric air into the head space above liquid level within the container. This is quite the opposite from release of pressurized chlorine or peroxygen from within a container. Those skilled in the art seeking to solve the problem related to vacuum formation will not consult one directed toward pressure release.

Structural differences arise from the functional purposes of the Painchaud et al. closure. Of most significance is that the patch 31 adhered to the neck is required to be peeled prior to any dispensing of bleach. See references to the peelable seal in the Abstract (lines 5, 8 and 12) and column 3 (lines 15-18). Only during storage is the peelable seal kept in place to prevent egress of any liquid bleach. Prior to first use, the peelable seal is removed. This seal or patch has no further function in any pouring out of bleach liquid from the bottle.

A combination of Paulovich et al. in view of Painchaud et al. would not render the instant invention obvious. The primary reference lacks the crucial adhered patch. Painchaud et al. has an adhered patch (albeit without any vent opening). Yet this adhered patch must be peeled away and discarded prior to dispensing bleach liquid. The peelable patch of Painchaud et al. is therefore not a suggested alternative for any dispensing closure mechanism of Paulovich et al. For these reasons, the combination of art would not render the present claims obvious.

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Claims 7 and 14 were rejected under 35 U.S.C. § 103(a) as unpatentable over Paulovich et al. (US Patent 6,523,724) in view of Painchaud et al. (US Patent 5,161,271) and further in view of Ostrowsky (US Patent 3,993,208). Applicant traverses this rejection.

The deficiencies of Paulovich and Painchaud et al. have already been discussed, *vide supra*. Ostrowsky does not remedy those basic deficiencies.

Ostrowsky was specifically cited for disclosing a raised portion 66 which points to pressure surface areas of the cap. The Examiner considered obvious for those of ordinary skill to have modified Paulovich et al./Painchaud et al. with a raised portion as taught by Ostrowsky. Applicant respectfully disagrees and provides comment below.

The Ostrowsky raised indicator arrows 66 are to instruct a consumer on how to open the closure. Prior to opening, the indicator arrows must be properly aligned with pressure surface areas of the cap.

By contrast, the raised portion of the claimed venting cap is for alignment of the cap to achieve proper assembly at the manufacturing stage. It is not meant as an aid to the consumer. See the specification at page 13 (lines 18-23) where it states: "*During assembly, the patch may be inserted into the vent cap such that the aperture in the patch is at essentially the same position within the cap and then the cap may be aligned by the raised portion 130 such that it is at essentially the same position once it is tightened onto the container. This will enable the aperture in the patch to be positioned in a predetermined area for each product coming off of an assembly line.*"

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Those of skill in the art would not have taken the Ostrowsky child-proof safety mechanism for use as a manufacturing tool. The child-proof mechanism is intended for operation by a consumer each time dispensing becomes necessary. This is quite different from the single use of the raised portion alignment device utilized in a production factory. For these reasons, the combination of Paulovich in view of Painchaud, and further in view of Ostrowsky would not render obvious claims 7 and 14.

In view of the foregoing comments, applicant requests the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,



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